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Federal Communications Commission
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VIDEO SERVICES FEDERAL COMMUNICATIONS COMMISSION
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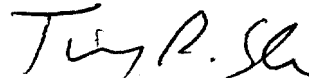
Re: Valley Public Television, Inc.
File No. BPET-900904KF
Bakersfield, California

Dear Ms. Searcy:

Transmitted herewith, on behalf of Valley Public Television, Inc., applicant for a construction permit for a new noncommercial educational television station on Channel *39 at Bakersfield, California, are an original and four copies of its "Reply to Partial Opposition" in the above-referenced matter.

Should any questions arise concerning this matter, please communicate with this office.

Very truly yours,



Timothy R. Schnacke
Counsel for
Valley Public Television, Inc.

Enclosures

ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Application of)
VALLEY PUBLIC TELEVISION, INC.) File No. BPET-900904KF
For a Construction Permit for)
a New Noncommercial Educational)
Television Station on)
Channel *39, Bakersfield, CA)
Directed to: Chief, Mass Media Bureau

**REPLY OF VALLEY PUBLIC TELEVISION, INC.
TO PARTIAL OPPOSITION OF
COMMUNITY TELEVISION OF SOUTHERN CALIFORNIA**

Valley Public Television, Inc. ("Valley"), by its attorneys, hereby respectfully replies to the "Partial Opposition of Community Television of Southern California" (the "Partial Opposition") responding to Valley's "Petition for Leave to Amend" (the "Petition") filed November 22, 1991, in the above-captioned proceeding.

1. In its Partial Opposition, Community Television of Southern California ("CTSC") states that it does not oppose any technical changes noted in Valley's Petition, but argues that the Commission should not accept any part of Valley's Amendment that is relevant to its comparative position. See Partial Opposition at p. 2-3. Particularly, CTSC opposes the acceptance of information contained in Exhibits A and B of Valley's Amendment because that information "may be relevant to [Valley's] comparative position". Id. at 3.

2. As clearly stated in Valley's Petition, Valley filed its Amendment pursuant to Sections 1.65 and 73.3514 of the Commission's Rules. 1/ Section 73.3514 requires applicants, inter alia, to include all information called for by the particular form on which the application is required to be filed." Section 1.65 makes each applicant "responsible for the continuing accuracy and completeness of information furnished in a pending application" and requires amendment of the application whenever the information furnished in that application is "no longer substantially accurate and complete in all significant respects." The information included in Exhibits A and B to Valley's Amendment is information specifically required by FCC Form 340 for applicants for noncommercial educational broadcast stations that operate as educational organizations. Exhibit A merely describes, as required by Question 2 on Page 2 of Form 340, the nature and educational purposes of Valley. Similarly, Exhibit B supplies information to demonstrate how Valley's governing board members are "broadly representative of the educational, cultural and civic segments of the principal community to be served", as specifically required by Question 3 on Page 2 of the form. CTSC's statement that this information must be precluded because it "may be relevant to [Valley's]

1/ Valley also noted in its Petition that the amendment was being filed under authority of § 73.3522 of the Commission's Rules. That section states that amendments to mutually exclusive broadcast applications filed prior to designation of the proceeding for hearing "will be considered only upon a showing of good cause for late filing or pursuant to § 1.65 or § 73.3514" (emphasis added).

comparative position", ignores the fact that Valley was required to supply the information and had a right to amend its application to meet that requirement. All of the information provided in Valley's Amendment, including the information in Exhibits A and B, are relevant to the basic questions contained in Valley's application for its proposed operation of a noncommercial educational broadcast station. There is no precedent for rejecting information in an amendment because it may be relevant to the comparative issue. The question is whether or not an amendment improves an applicant's comparative posture. CTSC has not demonstrated that Valley's Amendment will improve its comparative position under the noncommercial comparative issue. Therefore, CTSC's arguments that Valley's Amendment must be rejected because it might possibly have comparative effect, are simply not germane.

3. In its Partial Opposition, CTSC suggests that Valley does not have the legal qualifications to operate the Bakersfield Station. See Partial Opposition at 2, n.2. Contrary to that assertion, there is nothing in Valley's Amendment which adds to the substantive merits or changes the legal qualifications to operate the proposed station. Instead, as pointed out in Valley's Petition, the Amendment supplies information which clarifies Valley's predesignation proposal set forth in its original application. In that application, Valley correctly certified that there was nothing in its governing documents which would restrict it in advancing and educational

program or in complying with the Commission's Rules. Indeed, Valley's unamended bylaws already provided ample authority to operate the proposed station in the Bakersfield area and nothing in that document could be said to have restricted Valley in any way.^{2/} Additionally, Valley's bylaws provided a lawful procedure for amendment which was followed in this case.

4. Apart from information furnished solely to update information already provided to the Commission, none of the information supplied in Valley's Amendment, including Valley's educational goals and objectives, has changed since the "B" cut-off date. Valley stated in its original application that it intended to add individuals from the Bakersfield area to its governing board and Valley specifically pointed out in its Amendment that its educational purposes and objectives are unchanged and are a matter of Commission record. Thus, the Amendment only corrects certain inadvertent errors and provides the Commission with changes to remove confusion. It should, therefore, be accepted. See Cleveland Television Corp., 91 F.C.C. 2d 1129, 1135 n.3 (1982) (citing Anax Broadcasting, Inc., 87 F.C.C. 2d 483, 488 (1981)).

^{2/} The purposes recited in Valley's previously unamended bylaws were to operate a non-commercial educational station in Fresno, California "for the benefit of an area including, but not limited to, Kings, Madera, Tulare, and Fresno Counties ... and to do all things reasonable, necessary, suitable, proper, convenient, or incidental to the aforesaid purpose" Operating a satellite/semi-satellite station of Valley's Fresno station to extend that station's service to benefit the Kern County area would clearly fall within the scope of this authority even if Valley's bylaws prohibited amendment of that section.

WHEREFORE, Valley requests that its Petition for Leave to Amend be granted and the entirety of its Amendment be accepted.

Respectfully submitted,

VALLEY PUBLIC TELEVISION, INC.

By: Tim R. Schnacke
Richard Hildreth
Timothy R. Schnacke

Its Attorneys

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December 17, 1991

CERTIFICATE OF SERVICE

I, Sandra Johnson, a Secretary in the law firm of Fletcher, Heald & Hildreth, do hereby certify that true copies of the foregoing "Reply of Valley Public Television, Inc. to Partial Opposition of Community Television of Southern California" were sent this 17th day of December, 1991, by first-class United States mail, postage prepaid, to the following:

Theodore D. Frank, Esquire
Arent, Fox, Kintner, Plotkin & Kahn
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Counsel for Community Television
of Southern California


Sandra Johnson